



Town of Brookline

Massachusetts

BOARD OF APPEALS
Diane R. Gordon, Co-Chair
Harry Miller, Co-Chair
Bailey S. Silbert

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2210 Fax (617) 730-2248

Patrick J. Ward, Secretary

TOWN OF BROOKLINE BOARD OF APPEALS CASE NO. 070043

Petitioner, Jeffrey Feuerman, applied to the Building Commissioner for permission to construct a new building at 51 St. Paul Street containing four residential dwelling units per plans. The application was denied and an appeal was taken to this Board.

On June 7, 2007, the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed August 9, 2007 at 7:15 p.m. in the Main Library, Hunneman Hall, as the time and place of a hearing. Notice of the hearing was mailed to the Petitioner, to his attorney (if any of record), to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published July 19, 2007 and July 26, 2007, in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

NOTICE OF HEARING

Pursuant to M.G.L. C. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: JEFFREY FEUERMAN

Location of Premises: **51 ST. PAUL ST BRKL**

Date of Hearing: **08/09/2007**

Time of Hearing: **7:15 p.m.**

Place of Hearing: **Main Library, Hunneman Hall 2nd Floor**

A public hearing will be held for a variance and/or special permit from

1. **3.03.6.1.h.2; Interim Planning Overly District; Use 6; Special Permit Required.**
2. **5.01; Table of Dimensional Requirements; Footnote #1; Variance Required.**
3. **5.43; Exceptions to Yard and Setback Regulations; Special Permit Required.**
4. **5.44.4; Accessory Underground Structures; Special Permit Required.**
5. **5.50; Front Yard Requirements; Variance Required.**
6. **5.51; Projections into Front Yards; Variance Required.**
7. **5.60; Side Yard Requirements; Variance Required.**
8. **6.02.1; Table of Off-Street Parking Space Requirements; Variance Required.**
9. **6.04.4.f; Design of All Off-Street Parking Facilities; Special Permit Required.**

Of the Zoning By-Law to construct a new building containing four residential units per plans

at **51 ST. PAUL ST BRKL**

Said Premise located in a M-1.0 district.

The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.

**Diane R. Gordon
Harry Miller
Bailey Silbert**

Publish: July 19, 2007 and July 26, 2007.

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Board members Diane R. Gordon, Lawrence E. Kaplan and Sara McCauley Sheldon. The petitioner was represented at the hearing by Attorney Jeffrey P. Allen of Seegel, Lipshutz & Wilchins, P.C., 20 William Street, Suite 130, Wellesley, MA.

At the hearing, Polly Selkoe, Assistant Director for Regulatory Planning, distributed the Planning Board Report dated July 26, 2007. Mr. Allen then described the factual background for the petition as follows:

51 St. Paul Street is a 10,168 sq. ft. lot with an existing two-and-a-half-story two-family dwelling located near the intersection of Alton Place and St. Paul Street. An asphalt driveway and parking area exists to the right of the structure. A wood stockade fence lines the left side lot line. A chain link fence runs along the right side lot line; while a wood retaining wall exists to the rear. St. Paul is a two-way street. There is little change in grade along the lot's front lot line or from the front lot line to the rear. The surrounding neighborhood includes mostly larger apartment buildings fronting along St. Paul Street. Immediately abutting the property to the left is a long, low-rise residential condominium building with drive access from both St. Paul Street and Perry Street. The rear abutter is a small single-family dwelling. The right side abutter is a moderately-sized apartment building.

The petitioner is proposing to demolish the existing two-family dwelling and construct a new three-story multi-family building with four dwelling units. Parking for 8 cars would be enclosed on the first floor, with two residential levels above. The parking would be accessed through a front garage door, slightly recessed from the building's front wall. The building would have a consistent setback for the first floor, while the upper floors would be partially set back from the first floor edge and have varying degrees of articulation. The side setbacks for the building range from a minimum of 8 feet 9 inches on the first

floor to 12 feet 9 inches on the upper floors. Other setbacks include a front yard setback ranging from 11 feet 6 inches to 20 feet and a rear yard setback of 30 feet. The total floor area for the building would be 10,042 s.f. The units would range in size from 1,608 s.f. to 2,058 s.f.

The front of the building has a covered porch-like treatment for the garage and lobby entrance. A small covered deck would be located on the second floor at the front left corner and an open deck and stairs would exist at the rear right corner of the building. Two roof decks, one near the front and another near the rear, would be recessed on the roof of the building. The penthouse stairs providing access to the decks would partially protrude above the roofline. These roof decks and the rear yard of the lot would provide the usable open space for the building's residents. The applicant is proposing to finish the exterior of the building in a combination of wood shingles, clapboards, and stone veneer.

Mr. Allen reviewed the zoning relief necessary for the proposed building:

Section 3.03.6.1.h.2 – Interim Planning Overlay District – Use 6

The Coolidge Corner Interim Planning Overlay District has since expired and no longer applies to this application.

Section 5.01 – Table of Dimensional Requirements – Footnote #1: Garage Setback

Section 5.43 – Exceptions to yard and Setback Regulations

Section 5.44.4 – Accessory Underground Structures

Any part of a main building used for accessory garage use not located entirely beneath the surface of the ground must be set back at least 10 feet in M zoning districts; special permit required.

Section 5.50 – Front Yard Requirements

Section 5.51 – Projections into Front Yards

Bays and porches less than half the length of the front wall may project into the front yard up to 3 ½ feet. Belt courses, chimneys, flues, fins, columns, leaders, sills, pilasters, lintels and ornamental features may project into a front yard up to one foot, and cornices and gutters up to two feet. In this case, the columns and ornamental features for the garage entryway extend into the front yard setback 3 ½ feet.

Section 5.60 – Side Yard Requirements

Section 6.02.1 – Table of Off-Street Parking Space Requirements

Section 6.04.4.f – Design of All Off-Street Parking Facilities

Entrance and exit drives shall be designed to insure maximum pedestrian and vehicular safety and to minimize conflicts between pedestrians and motor vehicles; special permit required.

Dimensional Requirements

	<u>Required/Minimum</u>	<u>Proposed</u>	<u>Finding</u>
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Front Yard Setback – Garage/Covered Vehicular Passageway	20 feet	13 feet	Variance / Special Permit*
Front Yard Setback – Projections	Bays & Porches: 11.5' ----- Columns & Ornamental features: 14'	Bays & Porches: 11.5' ----- Columns & Ornamental Features: 11.5'	Complies ----- Variance / Special Permit*
Right Side Yard Setback	21.9 feet (10' + L/10')	8'9" to 12'9"	Variance / Special Permit*
Left Side Yard Setback	21.9 feet (10' + L/10')	8'9" to 11'9"	Variance / Special Permit*
Rear Yard Setback	30 feet	30 feet	Complies
Usable Open Space	2,008 s.f. 20% of gross f.a.	2,431 s.f.	Complies
Landscaped Open Space	1,054 s.f. (10% of f.a. plus 5%)	2,082 s.f. (estimate)	Complies
Parking Spaces	9 spaces	8 spaces	Variance
Accessory Garage Setback	10 feet	8 feet 9 inches	Special Permit**

* Under Section 5.43, the Board of Appeals may waive by special permit yard and setback requirements if the applicant provides a counterbalancing amenity. In this case, the petitioner has indicated landscaping would be provided as a counterbalancing amenity.

** Under Section 5.44.4, the Board of Appeals by special permit may modify the setback requirements for a part of a main building used for accessory garage use and not completely underground if the modification is counterbalanced by appropriate landscaping and screening.

In support of the requested special permits, Mr. Allen stated that the side yard setbacks would be well landscaped to screen the building from abutters. Mr. Allen further stated that the landscaped open space far exceeds that required by the Zoning Bylaw. With regard to the requested variance to reduce the number of required parking spaces, Mr. Allen stated that literal compliance with the parking requirements under the By-Law is not feasible in light of the existing conditions at the lot in question. In particular, Mr. Allen stated that as a result of the unique character of the lot, failure to grant the requested variance would cause substantial hardship to the petitioner by preventing the petitioner from utilizing the property to its fullest extent. Mr. Allen further stated that two parking spaces per unit was acceptable for the

neighborhood. Accordingly, the requested variance is particularly appropriate under the circumstances of this petition.

The Chairperson inquired if any members of the public wished to be heard. Several members of the public expressed concern regarding setbacks, the massing of the proposed building, and the need for a variance from the parking requirements. However, the rear abutter strongly favored the proposal. In particular, the design of having the parking under the units allows for more green space on the property than is required, and will serve to better manage heat gain and water runoff than the existing large on grade asphalt parking areas to either side of the existing building. The petitioner has indicated that he would work closely with the neighborhood replacing and replanting trees along each side of the building to preserve the natural green feeling of the trees and the home for birds. Additionally, the plan of a 30 ft by 62 ft green area along the rear benefits the whole neighborhood.

Polly Selkoe, on behalf of the Planning Board, gave the following report:

The Planning Board does not support this proposal to construct a new residential building with four dwelling units at 51 St. Paul Street because the development proposal needs significant side yard setback relief on both sides and a variance for parking. Although the Planning Board acknowledges the difficulties of developing such a narrow lot, the Planning Board believes that a building of this size, approximately nine feet from the side yard property lines, would negatively impact the abutters to each side. From a planning point of view, the Planning Board had no objection to the waiver of one parking space, however, they were not convinced that the variance requirements could be met. Therefore, the Planning Board voted three to one (3-1) to recommend denial.

Frank Hitchcock, Senior Building Inspector, spoke on behalf of the Building Commissioner. He restated the various sections of the Zoning By-law under which relief is needed. The Building Department has no objections to the proposal and will ensure that all State Code provisions are satisfied.

The Board having deliberated on this matter, considered the foregoing testimony and concluded that it is desirable to grant all the relief requested by this Petitioner, subject to certain conditions.

The Board considered the visual relationships of site and proposed construction to the use, scale, and architecture of the surrounding community. The Board has considered whether the proposal creates harmonious visual relationships and the Board has determined that the relationship is, in general, harmonious. The Board further finds that the proposed new residential structure will not be more detrimental to the neighborhood than the existing conditions. The use as proposed to be developed and the site design are aesthetically pleasing. The proposed design is adequate and appropriate for the neighborhood. The proposed development will not have any substantial effect on the traffic, nor will it cause a nuisance or serious hazard to vehicles or pedestrians. The Board finds that the proposed use will not remove any existing low or moderate-income housing in the Town.

Accordingly, the Board makes the following findings pursuant to **Sections 5.09 and 9.5:**

1. The location, topography, vicinity and natural features of the site make it particularly suitable for the proposed four unit residential building with enclosed parking.
2. The use as proposed by the petitioner will not adversely affect the neighborhood.
3. There will be no nuisance or serious hazard to vehicles or pedestrians.
4. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
5. The proposed new residential building will not have a significant adverse affect on the supply of housing available for low and moderate income people.

In regard to the requested variance, the Board finds that the literal compliance with the requirements of the By-Law is not feasible in light of the existing conditions at the lot in question. As a result of the lot

conditions, failure to grant the requested variances would cause substantial hardship to the property owner by preventing the owner from fully utilizing his property. Granting the requested variance to omit one parking space will allow the petitioner to maximize open space and will not be detrimental to the public good nor nullify or substantially derogate from the intent or purpose of the Brookline Zoning By-Law.

Accordingly, the Board grants special permits pursuant **to Sections 5.01, 5.43, 5.44.4, and 6.04.4** and a variance from **6.02.1** to construct a new 4 unit residential building with enclosed parking for 8 vehicles per plans titled "Brookline Development Corp., 51 St. Paul Street," prepared by O'Sullivan Architects and last dated 6/29/07; and the site plan titled "51 St. Paul Street," prepared by J.F. Hennessy Co. and last dated 4/26/07, subject to the following conditions:

1. Prior to issuance of a building permit, plans and elevations indicating the final design of facades, colors, materials, windows and rooftop details, and placement of utilities for HVAC and transformers shall be submitted for the review and approval of the Planning Board.
2. Prior to issuance of a building permit, a final site and landscaping plan, indicating utility locations, garage warning device, plant types and sizes, hardscape materials, and fencing, shall be submitted for the review and approval of the Planning Board. The developer shall institute "best practices" to ensure the preservation of the mature border tree at the head of space number two in the parking lot to the North of the site.
3. Prior to issuance of a Certificate of Occupancy, the petitioner shall install a motorist-activated garage door with a device to warn approaching pedestrians of exiting vehicles, subject to the review and approval of the Assistant Director for Regulatory Planning.
4. Prior to the issuance of a building permit, a construction management plan, including parking locations for construction vehicles, location of port-a-potties, and a rodent control

plan, shall be submitted for review and approval by the Transportation Director and Health Director, with a copy of the approved plan submitted to the Planning Department.

5. One temporary construction and/or development sign, no greater than 20 square feet, may be erected on site during the construction and initial leasing period, with the design subject to the review and approval of the Assistant Director for Regulatory Planning.
6. Prior to the issuance of a building permit, the petitioner shall submit to the Engineering Department for review and approval the proposed driveway entrance/egress plan with a copy of the approved plan submitted to the Planning Department.
7. Prior to the issuance of a building permit, the petitioner shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor, including grading and location of utilities; 2) building elevations stamped and signed by a registered architect; 3) a final landscaping plan prepared by a landscape architect; and 4) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of
The Board of Appeals



Diane R. Gordon

Filing Date:

A True Copy:

ATTEST



Patrick J. Ward
Chair, Board of Appeals

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REGISTRARS OF VOTES

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